IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.5657 OF 2005.
IN
FIRST APPEAL NO.1599 OF 2006.

Shri Dattatraya Dinkar Kadam. ... Applicant.

Versus.

Smt.Sangeeta Shankar Kadam & ors. ... Respondents.

Shri R.S.Patil for the Applicant.

Shri H.G.Misar for the Respondent No.5.

CORAM : ABHAY S.OKA, J.

DATED : 5th October, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned Advocate for the 5th Respondent. The Applicant is the Appellant in the Appeal who is the original Opponent No.1 in a claim petition filed by Respondents Nos.1 to 3 herein under section 166 of the Motor Vehicles Act, 1988. The Applicant is the owner of the vehicle which is involved in the accident. The Respondent No.5 herein is the insurer of the vehicle. A contention was raised before the Tribunal that at the time of accident, the deceased and his mother were allowed to travel in the vehicle as fare paying passengers in breach of the terms and conditions of the policy of insurance which require the Applicant to use the vehicle only for carrying goods and not for carrying passengers on hire.

2. The case made out by the original Claimants was that at the relevant time the deceased was travelling in the vehicle as owner of the goods and therefore, the 5th Respondent-Insurer was liable to satisfy the Award which may be passed against the Applicant. The said case not been accepted by the Tribunal. Therefore, the Tribunal initially directed the 5th Respondent to pay the compensation to the Claimants and permitted the 5th Respondent to recover the said amount from the Applicant in the proceedings for execution of the Award made by the Tribunal. The prayer in this Application is for stay of the execution of that part of the direction issued in the impugned Award by which the 5th Respondent has been permitted to recover the compensation amount from the Applicant.

3. On the last date, this Application was adjourned to enable the Applicant to take instructions whether the Applicant was in a position to deposit a reasonable amount. The learned Advocate for the Applicant states that he has not received any instructions from the Applicant though he had sought instructions.

4. In view of the categorical finding of the Tribunal, there cannot be any unconditional stay in favour of the Applicant. Under the impugned Award, the 5th Respondent is entitled to recover the amount paid by

the 5th Respondent to the Claimants. The stay can be granted to the execution against the Applicant only subject to the Applicant furnishing security for the amount which is already paid by the 5th Respondent to the Claimants.

5. Hence the Civil Application is disposed of by the following order:

i) There will be interim relief in terms of prayer clause (b) confined to the direction issued against the Applicant subject to the Applicant furnishing adequate security for the amount paid by the 5th Respondent to the Claimants to the satisfaction of the Tribunal. The security shall be furnished within a period of 16 weeks from today.

ii) On the failure of the Applicant to furnish the security within the stipulated period, the interim relief will stand vacated without further reference to the Court.

Judge.